

ETIC Dig Law Update

May 12th, 2016

On April 1st 2016 at 10:00 am a group of stakeholders met in Billings at the Montana Dakota Utilities office. Our objective was to define and agree upon proposed changes to our existing dig law that will satisfy all federal excavation enforcement criteria, improve the safety of all people performing excavation tasks and protect our infrastructure.

To assure we stayed on track our goals were reviewed at the start of the meeting.

- **Achieve consensus**
- Focus on becoming compliant. Which translates into making certain that all gas and liquid lines which are under the jurisdiction of PHMSA and the Montana PSC are made safe and protected under the Montana Safe Digging rules.
- Then focus on increasing excavation safety around all utilities which in turn will help maintain the integrity of our infrastructure.

Understanding the complexity and challenges involved in defining the penalties associated with this law we dedicated this meeting to working on a defined penalty matrix. John Fitzpatrick presented a document for us to use as a starting point.

We started on the excavator side of penalty matrix. The first decision block asks, "Did the excavator obtain a locate?" After a lengthy discussion on what a locate was, we determined we should work on what we could agree wasn't a locate.

We achieved consensus in that, as a contractor damaging a facility after not calling to request locates aligns with an escalating penalty based on repeated offences.

There is also consensus that digging outside the described area of the locate request does not constitute having obtained a locate.

There is consensus that notwithstanding emergency locates, digging prior to the work to begin date on the call ticket (needs to coincide with the statute time, IE 12:01 AM) or the confirmation of facilities located by affected buried facility owners, does not constitute obtaining a locate.

Although we didn't vote on it, there appears to be a consensus that statute, when dealing with fines, should define as much detail as possible leaving the Board's responsibility to be tracking and ensuring the matrix is properly implemented. (We will need to vote on this next meeting)

John Fitzpatrick stated that he believes if you hit two lines in one excavation it is one incident. We did not take a consensus vote on this but it appeared there was consensus. There needs

to be more discussion on this to set distances and for situations like joint trench. No vote was taken for a consensus.

We achieved a consensus that parties present would take the concepts of exhibit 2 (Part 1) to their members to try to get conventional approval that includes a rolling 12 month reset on the incident tracking used to escalate the level of fine.

There is consensus that paying or being subjected to a fine is not an admission of liability.

Below is a list of items we debated that we do not have a consensus on but have agreed to continue discussions and to bring back fresh ideas to the next meeting that can help build a product that brings consensus.

1. There needs to be a difference in the fine matrix between land owners and contractors.
2. Contractors that are bigger and dig more should not escalate to higher fines or to the top of a repeat offenders list as fast as those smaller contractors that dig less and are exposed less.
3. To make things consistent, how do we track contractors that have multiple area offices, multiple subsidiaries and those that change names often?
4. Do we develop a complaint driven system where liquid and gas companies are required to file a complaint and other utilities are allowed to do so at their discretion or do we have a completely bifurcated law that separates gas and liquid lines from other utilities.
5. Should incidents that get reported without a complaint filed, or incidents on the non-pipeline side of a bifurcated law be used in the repeat offender calculation in the penalty matrix? If so how would we track this?
6. How do fines for a landowner or homeowner that may not know the extent of the law and hit a line differ from excavators that dig all the time?

Those present at the meeting were asked to bring back some proposal that would help achieve a consensus on a fine matrix.

Our next meeting will continue to focus on penalties for non-compliance. We will meet at the NorthWestern Energy building, 11 W. Park St, in Butte on May 10th at 10:00 am.

The stakeholders group met as planned on May 10th in the NWE office in Butte. Our goal for the meeting was to achieve consensus on the fine matrix.

Dale Schultz handed out a flow chart that incorporated the items that had a consensus in a previous meeting and the fine schedule proposed by John Fitzpatrick at the last meeting. He

also added his ideas to compromise with the contractors and their concerns with making the escalating fining, through historic records, fair-minded for those excavators that dig more often and have an occasional damage complaint with those that dig less often and damage utilities the same number of times in the same time period.

After reviewing the flowchart the group discussed the logistics of a damage reporting database and positive response. We also reviewed the number of locate requests made by specific excavators.

The first consensus reached was to strike the third party impact multiplier from the fining matrix. The group felt that the civil courts would and should handle the financial effects from third party impacts.

There is consensus that the dig law statute include reference to civil liability.

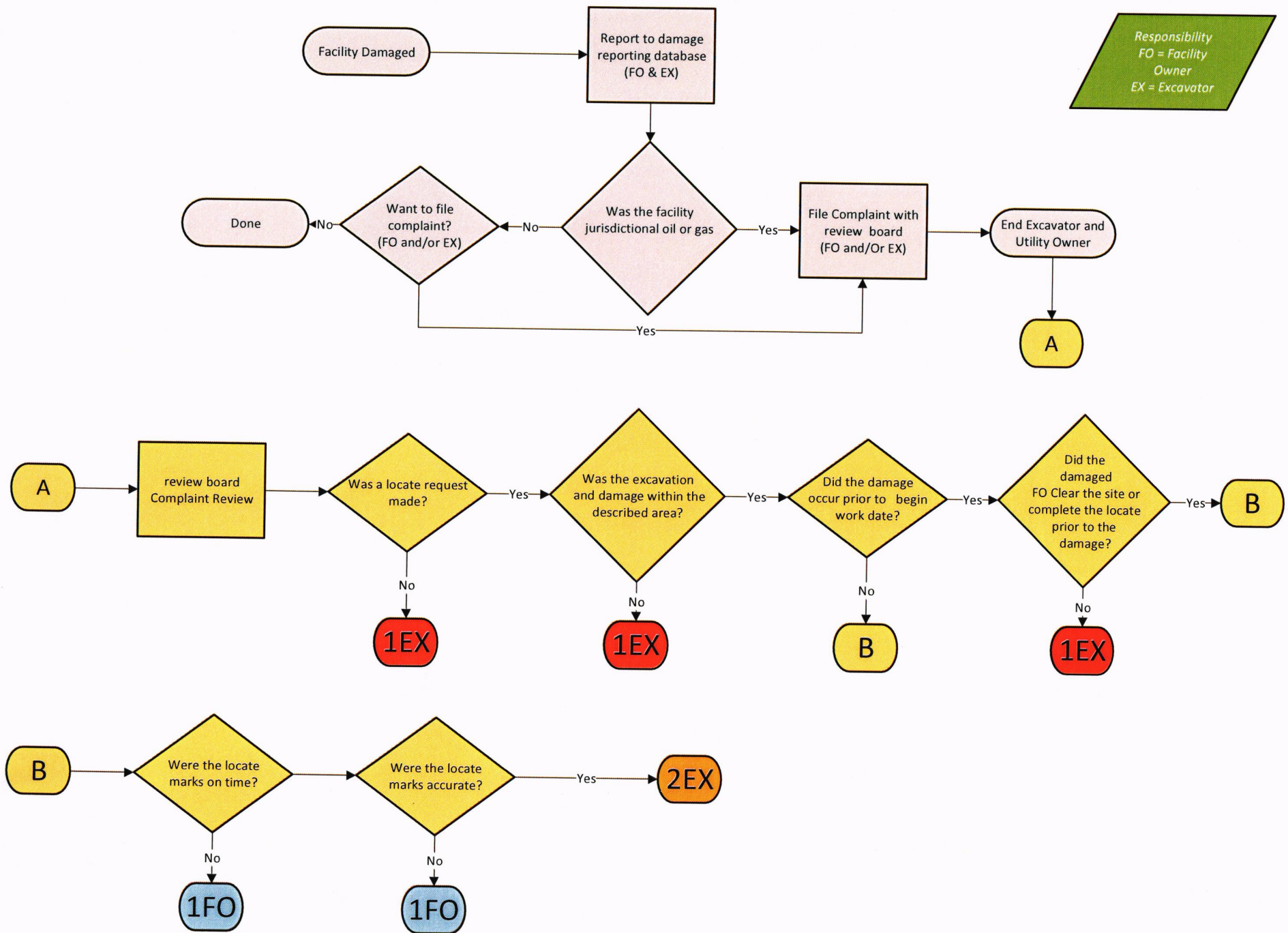
19.122.070 civil penalties Washington law states: this chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage.

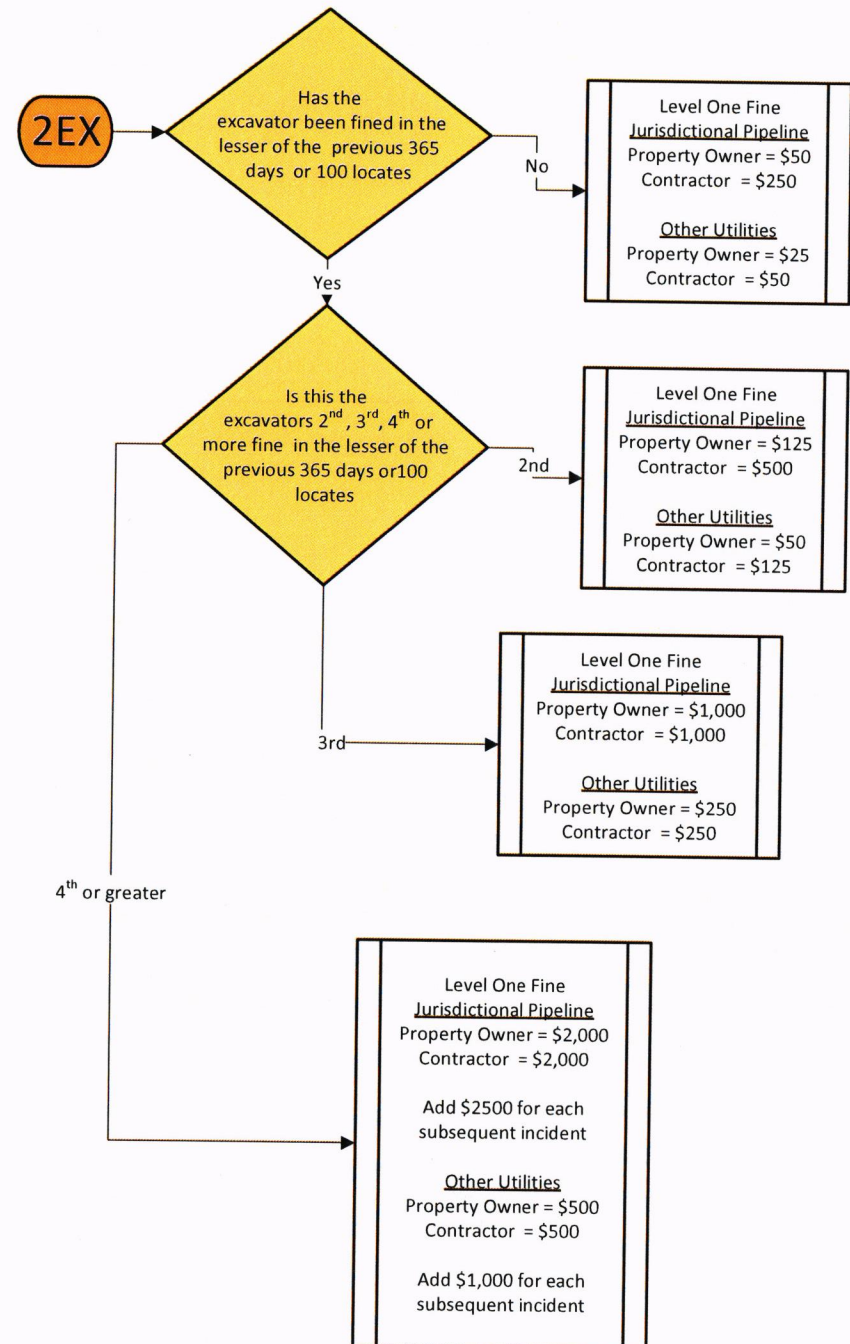
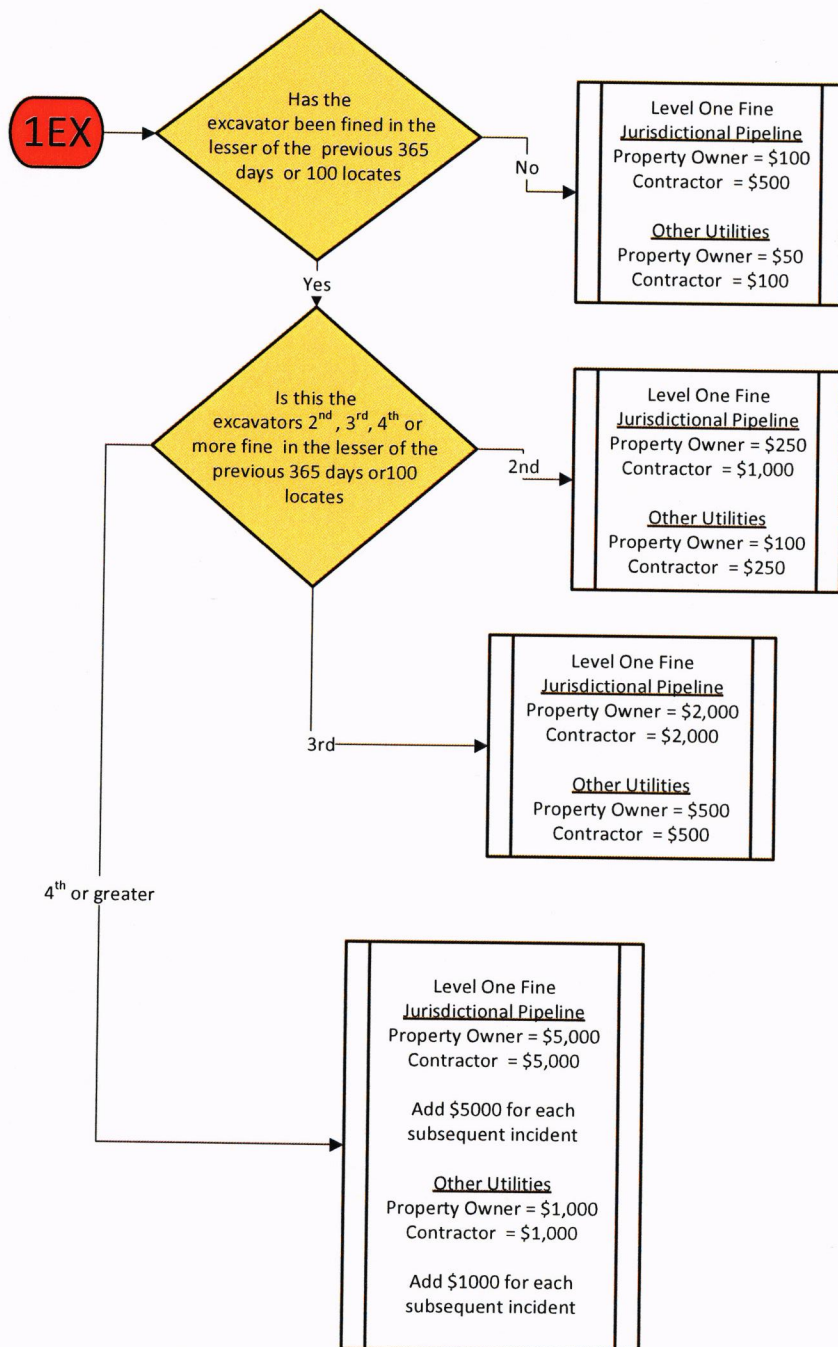
There is consensus with the fine matrix with the changes included in the attached file, Fine Matrix Flow Chart 5 10, with the tentative acceptance of the number 100 as the reset number of locates for fine levels based on historical fines. More research will be done and presented at the next meeting to help set and come to a consensus on the reset number.

Two meeting dates were set. The first is scheduled for June 10th at 10:00 am in the NWE office in Butte. The second is scheduled for July 12th at 10:00 am in Helena. The location will determine and be announced at a later date.

Consensus Items to Date

1. **There was consensus** to first work on change to meet minimum PHMSA requirements for the regulated liquids and gas pipelines as everyone understands and supports this need.
2. **There was consensus** to dedicate adequate time at future stockholder meetings to discuss a matrix of outcomes for not calling for a locate and or damaging buried lines as well as for buried line owners if they do not participate in a "one call program to provide locates. A goal discussed was prevention and education for unintentional acts with flexibility graduating up to properly penalize those whose actions indicate disregard for the requirement to call prior to digging and to the danger and damage of hitting buried lines.
3. **There was consensus** that the stakeholders in future meetings will work on increased reporting even of non-pipelines and reach out to stakeholders that may not have attended this meeting. The ability to reach consensus in this area is the flexibility to report non-regulated pipeline incidents with only the detail deemed appropriate. Based on the judgment of the owner wires or other non-regulated pipeline facility, it may be appropriate to report only that there was an incident and the general location where. Conversely for the rare contractor failing to follow the locate law, then digging through lines with little regard for safety or damage, would likely result in a report as detailed as required for digging into a pipeline.
4. **We achieved consensus** in that, as a contractor damaging a facility after not calling to request locates aligns with an escalating penalty based on repeated offences.
5. We all agreed that we needed to focus on enforcement. There was a consensus that the best manner to deal with this deficiency was to establish an unpaid review board under the department of labor.
6. **We achieved consensus** in that, as a contractor damaging a facility after not calling to request locates aligns with an escalating penalty based on repeated offences.
7. There is **also consensus** that digging outside the described area of the locate request does not constitute having obtained a locate.
8. **There is consensus** that notwithstanding emergency locates, digging prior to the work to begin date on the call ticket (needs to coincide with the statute time, IE 12:01 AM) or the confirmation of facilities located by affected buried facility owners, does not constitute obtaining a locate.
9. **We achieved a consensus** that parties present would take the concepts of exhibit 2 (Part 1) to their members to try to get conventional approval that includes a rolling 12 month reset on the incident tracking used to escalate the level of fine.
10. **There is consensus** that paying or being subjected to a fine is not an admission of liability.
11. **Consensus was reached** to strike the third party impact multiplier from the fining matrix.
12. **There is consensus** that the dig law statute includes reference to civil liability similar to 19.122.070 of the Washington Law. (3) *This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage.*
13. **There is consensus** with the fine matrix with the changes included in the attached file, *Fine Matrix Flow Chart 5 10*, with the **tentative acceptance** of the number 100 as the reset number of locates for fine levels based on historical fines. More research will be done and presented at the next meeting to help set and come to a consensus on the reset number.





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Has the
Facility Owner been fined in
the lesser of the previous 365
days or 100 locates

No

Level One Fine
Jurisdictional Pipeline
\$500

Other Utilities
\$100

Yes

Is this the
excavators 2nd, 3rd, 4th or
more fine in the lesser of the
previous 365 days or 100
locates

2nd

Level One Fine
Jurisdictional Pipeline
\$1,000

Other Utilities
\$250

3rd

Level One Fine
Jurisdictional Pipeline
\$2,000

Other Utilities
\$500

4th or greater

Level One Fine
Jurisdictional Pipeline
\$5,000

Add \$5000 for each
subsequent incident

Other Utilities
\$1,000

Add \$1000 for each
subsequent incident